

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

12-cr-18-wmc

v.

JOSHUA ALLEN SCHAAF,

Defendant.

The court is in receipt of defendant Joshua Schaaf's motion to correct a clerical error (dkt. #32), which must be denied. At the time of plea and later at sentencing, Schaaf asserts his understanding was that his 78-month term of imprisonment would run concurrently with his state sentence and that he would receive credit for time served beginning at the date of his state arrest on October 13, 2011. Schaaf does not indicate on what his claimed understanding was based, but he signed a plea agreement on April 12, 2012, advising that sentencing discussions were not part of his agreement and that he was not to rely on the possibility of a particular sentence based upon any such discussions. Before accepting his plea, Schaaf was again reminded of this in open court *and* advised that the court was neither bound by any understanding nor making any promises to the defendant as to the sentence that he may receive. Indeed, the defendant denied having any idea as to the specific sentence he would receive from this court.

At the time of his plea and at sentencing, the defendant was in primary state custody for violating the terms of his extended supervision in Dane County Circuit Court Case No. 07CF1238. Although his extended supervision with the state was revoked in part because of his federal offense, he had other violations as well, which was noted in

paragraph 53 of his presentence report. The defendant was also reminded in paragraph 128 of his presentence report of the possibility that his state and federal sentences could run consecutively, and indeed that Section 5G1.2, Application Note 3(C), of the advisory sentencing guidelines specifically recommends a consecutive sentence in situations where a defendant is serving a term of supervision at the time he commits the instant offense and the supervision is subsequently revoked. The purpose for this provision is to provide a reasonable punishment for the instant offense over and above the sentence for violating conditions of supervision. For this reason, the court stated on the record at the time of the defendant's sentencing hearing that the 78-month term of imprisonment was to run concurrently *with the remainder of his state sentence*.

Even if the court were inclined to revisit this part of the sentence now, the court lacks the authority to do so, as there was neither a clerical error in the judgment and commitment order, nor a result of oversight or omission within the meaning of Fed. R. Crim. P. 36. Rather, the federal sentence was intended to begin on the date imposed to provide for a reasonable sentence for the *federal* offense. Accordingly,

ORDER

IT IS ORDERED that defendant Joshua Schaaf's motion to correct a clerical error (dkt. #32) is DENIED.

Entered this 19th day of November, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge